

# Disciplinary and Other FINRA Actions

## Firms Fined, Individuals Sanctioned

**Access Financial Group, Inc. (CRD #33065, Chicago, Illinois) and Richard Irl Konst (CRD #273746, Registered Principal, Ocean City, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which they were censured.

The firm was fined \$150,000, ordered to disgorge \$113,000 in administrative fees it received from hedge fund clients and pay \$194,831.20 in restitution representing the profits the hedge fund clients realized. Konst was fined \$20,000 and must requalify by examination as a general securities principal within 120 days. If Konst fails to requalify on or before that date, his registration as a general securities principal will be suspended on that date until such time as he passes the required examination.

Without admitting or denying the findings, the firm and Konst consented to the described sanctions and to the entry of findings that the firm acted as a selling agent through its broker-dealer division and enabled hedge fund clients to engage in deceptive practices regarding market timing in the sub-accounts of variable annuities through accounts maintained at the firm. The findings stated that as a result of the firm's activities, the hedge fund clients transferred assets between the sub-accounts of variable annuities from companies, after receiving restriction letters from the companies, that yielded \$194,831.20 in profits to the clients. The findings also stated that the firm received \$113,000 in fees for administrative services rendered in connection with the variable annuity contracts the clients purchased through the firm. The findings also included that Konst failed to adequately supervise the firm's variable annuity business and the market timing activities of the hedge fund clients. FINRA found that the firm failed to keep electronic communications for three years and/or failed to preserve electronic mail communications for the first two years in an accessible place. (FINRA Case #SAF2004040801)

**Prospera Financial Services, Inc. (CRD #10740, Dallas, Texas), Michael Allen Lovett (CRD #2203338, Registered Principal, Puyallup, Washington) and Michael Steven Corelli (CRD #3017984, Registered Representative, Goldens Bridge, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$30,000, \$10,000 was jointly and severally with Lovett, and \$15,000 was jointly and severally with Corelli. In addition, Corelli was fined \$8,395, which includes \$3,395 in disgorgement of trading profits, and was suspended from association with any FINRA member in a research analyst capacity for 30 days. Lovett was suspended from association with any FINRA member in a principal or supervisory capacity for 10 business days. Without admitting or denying the findings, the firm, Lovett and Corelli consented to the described sanctions and to the entry of findings that the firm, acting through Corelli, issued research reports that failed to comply with SEC Regulation AC and NASD Rule 2711, in that Corelli issued a favorable research report on a stock issuer although he subsequently sold his stock shares after the report was published. The findings stated that the firm, acting through Corelli, issued research

## Reported for December 2007

FINRA has taken disciplinary actions against the following firms and individuals for violations of NASD rules; federal securities laws, rules and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB).

reports that failed to disclose the meaning of each rating the firm used in its rating system; failed to disclose the percentage of all securities the firm rated, to which the firm would assign certain ratings; failed to provide clear and comprehensive disclosures; and did not include certifications from Corelli that all of the views expressed in the reports accurately reflected his personal views, and did not disclose whether Corelli's compensation was directly related to the research.

The findings also stated that the firm, acting through Corelli, issued research reports and/or sales literature that failed to provide readers with a sound basis on which to evaluate the risks associated with an investment in the stocks being discussed; some pieces of literature failed to provide readers with a sound basis on which to evaluate estimated data regarding projected profits and cash flow; and some contained non-affirmative, unclear disclosures. The findings also included that the firm, acting through Lovett, failed to establish and maintain a system to supervise the activities of its registered representatives and associated persons reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules regarding research reports. FINRA found that the firm, acting through Lovett, failed to adequately supervise the issuance of the research reports and sales literature because Lovett approved the reports and literature with the above-noted deficiencies.

Lovett's suspension in a principal or supervisory capacity was in effect from November 19, 2007, through December 3, 2007. Corelli's suspension as a research analyst is in effect from November 19, 2007, through December 18, 2007. **(FINRA Case #E062005000301)**

**Whitaker Securities LLC (CRD #121465, New York, New York), Thomas Edward O'Neill (CRD #1237573, Registered Principal, Plandome, New York) and Frank Anthony Coniglio (CRD #2560370, Associated Person, Brick, New Jersey)** submitted Letters of Acceptance, Waiver and Consent in which the firm was censured and fined \$30,000, jointly and severally with O'Neill. O'Neill was suspended from association with any FINRA member in a principal capacity for 15 business days. Coniglio was fined \$10,000 and suspended from association with any FINRA member in any capacity for 10 business days. The fine must be paid either immediately upon Coniglio's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, the firm, O'Neill and Coniglio consented to the described sanctions and to the entry of findings that the firm, acting through O'Neill, permitted Coniglio to act in a capacity that required registration with FINRA while he was not registered in any capacity. The findings stated that the firm, acting through O'Neill, permitted firm employees to act in a capacity that required registration as research analysts, without being so registered.

O'Neill's suspension in a principal capacity was in effect from November 19, 2007, through December 10, 2007. Coniglio's suspension in any capacity was in effect from November 5, 2007, through November 16, 2007. **(FINRA Case #s 2005001198801/2005001198802)**

## Firm and Individual Fined

**Prestige Financial Center, Inc. (CRD #30407, New York, New York) and Lawrence Gary Kirshbaum (CRD #270856, Registered Principal, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which they were censured and fined \$15,000, jointly and severally. The firm was fined an additional \$12,500. Without admitting or denying the findings, the firm and Kirshbaum consented to the described sanctions and to the entry of findings that the firm, acting through Kirshbaum, received and held public customer funds made payable to the firm without receiving FINRA's advance approval prior to engaging in such actions and, as a result, failed to maintain the required minimum net capital while conducting securities business. The findings stated that the firm failed to maintain a Checks Received and Forwarded Blotter or an equivalent record as SEC Rule 17a-3 required. The findings also stated that the firm, acting through Kirshbaum, permitted individuals to maintain their FINRA registrations through their purported associations with the firm, when in fact they were not actively involved in its investment banking or securities business or otherwise functioning as firm representatives. **(FINRA Case #2006003723101)**

## Firms Fined

**A.B. Watley Direct, Inc. (CRD #18663, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it accepted customer short sale orders in Nasdaq Small Cap securities and for each order, failed to make an affirmative determination that the firm would receive delivery of the security on the customer's behalf, or that the firm could borrow the security on the customer's for delivery by settlement date. **(FINRA Case #20070090221-02)**

**Access Financial Group, Inc. (CRD #33065, Chicago, Illinois)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$45,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to timely report customer transactions in municipal securities to the MSRB. The findings stated that the firm failed to include the date and time of receipt in municipal securities transactions. The findings also stated that the firm failed to establish, maintain and enforce adequate written supervisory procedures designed to achieve compliance with applicable securities laws and regulations, in that the firm failed to establish adequate procedures for the timely reporting of municipal securities transactions to the MSRB. The findings also included that the firm executed corporate bond transactions that were eligible for reporting to the Trade Reporting and Compliance Engine (TRACE) that were reported late; transactions with a customer did not have a receipt time; some transactions were reported with the incorrect execution time and one trade was reported with the incorrect capacity; order tickets for agency transactions did not include a time of receipt or time of entry; and order tickets for principal transactions did not include a receipt time. FINRA found that the firm failed to establish, maintain and enforce adequate written

supervisory procedures reasonably designed to achieve compliance with applicable transaction reporting requirements under NASD rules related to TRACE reporting. (FINRA Case #2006003858001)

**American General Securities Incorporated (CRD #13626, Houston, Texas)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$25,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report, and to timely report, transaction information for corporate bond transactions to TRACE. The findings stated that the firm failed to report, and to timely report, municipal securities transactions with their corresponding inter-dealer trades to the MSRB. The findings also stated that the firm failed to establish, maintain and enforce a system to supervise the activities of its registered representatives reasonably designed to ensure compliance with NASD's TRACE reporting rule and MSRB Rule G-14. (FINRA Case #E062005001101)

**Commonwealth Church Finance, Inc. dba Charter Financial Services (CRD #11768, McDonough, Georgia)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it conducted a securities business while failing to maintain its required net capital. The findings stated that the firm's net capital calculation and books and records were inaccurate based upon the same failure to accrue liabilities in a timely manner. The findings also stated that the firm modified a contingency offering without disclosure, and broke escrow without depositing the full contingency amount in escrow, rendering false the representations in the offering document regarding the handling of the escrow account and the satisfaction of the contingency. (FINRA Case #2006003959001)

**First Montauk Securities Corporation (CRD #13755, Red Bank, New Jersey)** submitted a Letter of Acceptance, Waiver and consent in which the firm was censured, fined \$175,000 and required to review its systems and procedures regarding training and monitoring of supervisors, and establish systems and procedures reasonably designed to achieve compliance with the laws, regulations and rules concerning supervisors fulfilling their supervisory responsibilities. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to reasonably supervise its registered representatives' activities, and failed to establish and maintain an adequate supervisory system to ensure that supervisors were trained and reasonably fulfilling supervisory obligations. The findings stated that the firm's supervisors repeatedly ignored red flags warning of possible excessive trading and unsuitable transactions, and allowed branch managers to supervise their own business. The findings also stated that the firm failed to train its supervisors on how to use its broker audit system, what data and reports to review and how to respond to indications of red flags. The findings also included that the firm failed to retain business-related internal emails because it failed to configure its email system properly after a software upgrade. (FINRA Case #2005002133004)

**G.A. Repple and Company (CRD #17486, Casselberry, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$25,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it allowed registered representatives to preserve emails in a manner that permitted deletion and alteration, and failed to utilize media in compliance with SEC Rule 17a-4 that would have preserved records in a non-erasable and non-rewriteable format. The findings stated that the firm's systems and procedures were not reasonably designed to achieve compliance with the preservation requirements of SEC Rule 17a-4 with respect to electronic communications. The findings also stated that the firm failed to establish and maintain a system and procedures to supervise the activities of each registered and associated person to achieve compliance with securities laws and regulations requiring retention of emails. **(FINRA Case #2006003701201)**

**GLB Trading, Inc. (CRD #125363, Irvine, California)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$10,000 and required to revise its written supervisory procedures concerning trade reporting requirements. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit last sale reports of transactions in over-the-counter (OTC) equity securities to the OTC Reporting Facility, and failed to designate some of the reports as late. The findings also stated that the firm incorrectly designated last sale reports of transactions in OTC equity securities reported to the OTC Reporting Facility within 90 seconds of execution as "SLD." The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning trade reporting requirements. **(FINRA Case #20060055593-01)**

**Joseph Stevens & Company, Inc. (CRD #35459, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that in transactions for or with public customers, the firm failed to use reasonable diligence to ascertain the best inter-dealer market and failed to buy or sell in such market so that the resultant price to its customers was as favorable as possible under prevailing market conditions. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning best execution. **(FINRA Case #20050021708-01)**

**NFP Securities, Inc. (CRD #42046, Austin, Texas)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$12,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to timely file Uniform Termination Notices for Securities Industry Registration (Forms U5), and failed to file accurate and timely reports with FINRA pursuant to NASD Rule 3070. **(FINRA Case #E062005012702)**

**Oppenheimer & Co., Inc. (CRD #249, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$15,000 and required to pay \$6,852.51, plus interest, in restitution to public customers. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to use reasonable diligence in customer transactions to ascertain the best inter-dealer market, and failed to buy or sell in such market so that the resultant price to its customers was as favorable as possible under prevailing market conditions. **(FINRA Case #20060059062-01)**

**RBC Capital Markets Corporation (CRD #6579, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$225,000 to be paid jointly to NASD (and now, FINRA), New York Stock Exchange and the American Stock Exchange. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it inaccurately reported numerous short interest positions. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with NASD Rule 3360. **(FINRA Case #20060043882-01)**

**SICOR Securities Inc. (CRD #16195, Dayton, Ohio)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it used the mails or other means or instrumentalities of interstate commerce to effect securities transactions when it failed to meet its minimum net capital requirements. The findings stated that the firm prepared inaccurate trial balances, general ledgers and net capital computations for various time periods, and filed Financial and Operational Combined Uniform Single (FOCUS) IIA Reports with FINRA that were inaccurate, in that they overstated the firm's net capital. **(FINRA Case #2006004682101)**

**Valic Financial Advisors, Inc. (CRD #42803, Houston, Texas)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$250,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it accepted directed brokerage commissions in exchange for providing a mutual fund company with preferred access to its sale force. The findings stated that the firm failed to report, or to timely report, disclosure events pursuant to NASD Rule 3070. The findings also stated that the firm failed to establish, maintain and enforce a system and procedures reasonably designed to achieve compliance with federal securities laws and NASD Rule 3070 reporting requirements. **(FINRA Case #E062005009701)**

**Veritrust Financial, LLC (CRD #106594, Austin, Texas)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$25,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it conducted a securities business while failing to maintain its required minimum net capital and, as a result, its original net capital computations and FOCUS reports were materially inaccurate. The findings stated that the firm failed to file notice of its net capital deficiencies. The findings also stated that, in connection with best efforts, contingent private placement offerings, the firm deposited investor



funds into separate accounts at a real estate escrow company rather than at a bank as required by SEC Rule 15c2-4. The findings also included that the firm had inadequate procedures regarding contingent securities offerings. FINRA found that the firm failed to report disclosure events pursuant to NASD Rule 3070 and failed to update, or to timely update, Uniform Applications for Securities Industry Registration or Transfer (Forms U4) or Forms U5 to disclose required information. **(FINRA Case #2005003230201)**

## Individuals Barred or Suspended

**Leighton David Applefeld (CRD #6661, Registered Principal, Delray Beach, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Applefeld consented to the described sanction and to the entry of findings that he effected private securities transactions without prior written notice to, or written approval from, his member firm. The findings stated that Applefeld borrowed \$180,000 from public customers despite his member firms' prohibitions and contrary to NASD Rule 2370 provisions. The findings also stated that Applefeld failed to respond to a FINRA request for information and to appear for a FINRA on-the-record interview. **(FINRA Case #2006005878501)**

**Peter Guy Canonico (CRD #1680294, Registered Representative, Middletown, Maryland)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Canonico consented to the described sanction and to the entry of findings that he obtained \$46,000 from a deceased customer's mutual fund account and used the funds to his own use and benefit without authorization or consent. **(FINRA Case #2006005020701)**

**Paul Jude Casella (CRD #2461957, Registered Principal, Woodbury, New York)** was fined \$50,000 and suspended from association with any FINRA member in any capacity for one year. The sanctions were based on findings that Casella failed to supervise a registered representative who was engaged in selling unregistered securities without an exemption pursuant to Section 4 of the Securities Act of 1933. The findings stated that Casella ignored repeated red flags regarding the securities and made no inquiry to determine whether the shares were in compliance with Section 5 of the Securities Act.

The suspension in any capacity will be in effect from May 21, 2008, through May 20, 2009. **(FINRA Case #2005000075701)**

**Charles Anthony Chatman (CRD #4716532, Registered Representative, Streamwood, Illinois)** submitted an Offer of Settlement in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the allegations, Chatman consented to the described sanction and to the entry of findings that he exercised control over public customer accounts, and recommended and executed numerous securities transactions that were excessive and unsuitable for the customers based on their investment objectives, financial situation and needs, and lack of

knowledge and experience necessary to understand the risks associated with the transactions recommended. The findings stated that Chatman, by the use of any means or instrumentality of interstate commerce or of the mails, intentionally or recklessly engaged in manipulative or deceptive devices or contrivances in connection with the purchase or sale of securities, and intentionally or recklessly effected transactions in, or induced the purchase or sale of, securities by means of manipulative, deceptive or other fraudulent devices or contrivances. The findings also stated that Chatman exercised discretion in the public customers' accounts, making stock and option transactions without prior written authorization from the customers or his member firm's acceptance of the accounts as discretionary. The findings also included that Chatman engaged in outside business activities and failed to notify his firm prior to engaging in these activities. **(FINRA Case #20050003461-01)**

**Nigel Sheldow Christiani, (CRD #4513166, Registered Representative, Brooklyn, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$2,500 and suspended from association with any FINRA member in any capacity for 30 business days. The fine must be paid either immediately upon Christiani's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Christiani consented to the described sanctions and to the entry of findings that he failed to respond to FINRA requests to appear and provide testimony, but subsequently provided information in a written response.

The suspension in any capacity is in effect from November 5, 2007, through December 17, 2007. **(FINRA Case #2005001225401)**

**Bryan Lee Claggett (CRD #820866, Registered Principal, Benton, Arkansas)** was barred from association with any FINRA member in any capacity. The National Adjudicatory Council (NAC) imposed the sanction following appeal of an Office of Hearing Officers (OHO) decision. The sanction was based on findings that Claggett forged a public customer's signature on two account transfer documents and falsified a Form 1099 in order to mislead a customer that his account owned money market shares when, in fact, it owned none. Although the NAC also found that Claggett failed to notify his member firm in writing of his financial interest in a brokerage account held at another member firm, it declined to impose a sanction for this violation given the bar it imposed for the other two violations. **(FINRA Case #2005000631501)**

**Tony Nathan Cota (CRD #4147725, Registered Representative, Clovis, California)** was barred from association with any FINRA member in any capacity and ordered to pay \$43,539.36, plus interest, in restitution to a public customer. The sanctions were based on findings that Cota borrowed \$24,000 from a public customer in violation of his member firm's written procedures prohibiting such borrowing. The findings stated that Cota used a customer's annuity funds to feign loan repayments deposited in the customer's checking account, and failed to respond to FINRA requests for information and to provide testimony. **(FINRA Case #20060043565-01)**



**John Richard Cullen (CRD #2453019, Registered Principal, Oakhurst, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Cullen consented to the described sanction and to the entry of findings that he actively traded his personal account, incurring significant losses and in order to sell illiquid securities, gain a profit or avoid incurring future losses, he executed unauthorized transactions in his member firm's proprietary account. (FINRA Case #2006005824801)

**Linda Patricia Deck (CRD #4591299, Registered Representative, Greenfield, Wisconsin)** submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$5,000 and suspended from association with any FINRA member in any capacity for six months. The fine must be paid either immediately upon Deck's reassociation with a FINRA member firm following her suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Deck consented to the described sanctions and to the entry of findings that she cut and pasted or otherwise affixed the public customers' signatures to various insurance application forms without the customers' knowledge or consent. The findings stated that Deck submitted these applications along with customer checks that only partially covered premium payments for processing, knowing that the applications would be denied. The findings also stated that although the applications were denied, Deck was credited with sales numbers that counted toward her expected production level.

The suspension in any capacity is in effect from October 15, 2007, through April 14, 2008. (FINRA Case #2006004587701)

**Ronald James Derouin (CRD #5268829, Associated Person, Philadelphia, Pennsylvania)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Derouin consented to the described sanction and to the entry of findings that he willfully failed to disclose material information on his Form U4. The findings stated that Derouin failed to appear for a FINRA on-the-record interview. (FINRA Case #2007007841901)

**Stephen Roy Desiderio (CRD #2833627, Registered Principal, Staten Island, New York)** was barred from association with any FINRA member in any capacity. The sanction was based on findings that Desiderio knowingly provided false and misleading information to FINRA during on-the-record interviews. (FINRA Case #E102004104901)

**Harry Elmer Eschbach (CRD #4097936, Registered Representative, Miami, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Eschbach consented to the described sanction and to the entry of findings that he forged customer signatures on account transfer request forms in order to transfer the customers' accounts from his former member firm to his new member firm. (FINRA Case #2007008288401)

**Ralph Martin Freydberg Jr. (CRD #214274, Registered Principal, Stamford, Connecticut)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any FINRA member in a principal capacity for three months. Without admitting or denying the findings, Freydberg consented to the described sanctions and to the entry of findings that he failed to take appropriate action to supervise a registered representative that was reasonably designed to prevent his churning of a customer's account and achieve compliance with applicable securities laws, regulations and FINRA rules.

The suspension in a principal capacity is in effect from November 5, 2007, through February 4, 2008. **(FINRA Case No. 2006006255401)**

**Joseph Michael Giordano (CRD #2278341, Registered Principal, Mineola, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$7,500 and suspended from association with any FINRA member in any principal capacity for 10 business days. Without admitting or denying the findings, Giordano consented to the described sanctions and to the entry of findings that he failed to properly supervise a registered representative who engaged in penny stock transactions for public customers without satisfying required penny stock disclosure requirements.

The suspension in any principal capacity was in effect from November 5, 2007, through November 16, 2007. **(FINRA Case #2005002464702)**

**Virginia Sue Graham (CRD #5253162, Registered Representative, Davisville, West Virginia)** submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$5,000 and suspended from association with any FINRA member in any capacity for three months. The fine must be paid either immediately upon Graham's reassociation with a FINRA member firm following her suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Graham consented to the described sanctions and to the entry of findings that she wrote checks totaling \$3,700 payable to herself against a personal bank account that she had closed, knowing that the checks would be dishonored, and deposited them to an account she held at another bank to benefit temporarily from the "float" on the checks.

The suspension in any capacity is in effect from November 19, 2007, through February 18, 2008. **(FINRA Case #2007009132701)**

**Scott Martin Hacker (CRD #1997386, Registered Principal, Providence, Rhode Island)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Hacker consented to the described sanction and to the entry of findings that he caused his member firm's parent company to make charitable donations of \$32,000 to a non-profit organization of which he was treasurer without the authority to do so. The findings stated that Hacker failed to provide on-the-record testimony that FINRA requested. **(FINRA Case #20070079701)**

**Michael Charles Hopen (CRD #1315490, Registered Representative, Cape Girardeau, Missouri)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Hopen consented to the described sanction and to the entry of findings that he engaged in a scheme to obtain non-securities funds from a public customer by transmitting, or causing to be transmitted, electronic wire transfer of funds and money from the customer's bank account to Hopen's credit card accounts. The findings stated that Hopen caused checks to be written on the customer's bank account that were made payable to Hopen, and obtained approximately \$16,700 in non-securities funds from the customer. The findings also stated that Hopen failed to respond to FINRA requests for documents and information. **(FINRA Case #20060065638-01)**

**Trent Alan Johnson (CRD #3187364, Registered Representative, Rockford, Illinois)** was suspended from association with any FINRA member in any capacity for two years. The sanction was based on findings that Johnson willfully failed to disclose material information on his Form U4.

The suspension in any capacity is in effect from November 5, 2007, through November 4, 2009. **(FINRA Case #2006004240301)**

**Brian Peter King (CRD #2785488, Registered Principal, Massapequa Park, New York)** submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for nine months. Without admitting or denying the allegations, King consented to the described sanctions and to the entry of findings that he executed orders to purchase stock in his member firm's omnibus account using an electronic order routing system. The findings stated that as a result of the trades, King's firm had an unrealized loss of \$116,340 at the end of the day, and to prevent the discovery of the loss, King falsely allocated the stock trade to a non-proprietary account. The findings also stated that King knew the non-proprietary account's owner had not authorized the stock purchase. The findings also included that because of the trades, King caused his firm to conduct a securities business while failing to maintain the minimum required net capital. FINRA found that King's falsification of the transaction spreadsheet on which the trades were recorded, and his failure to respond truthfully to firm inquiries about the trades, caused his firm to be unaware of its net capital deficiency for several days.

The suspension in any capacity is in effect from November 19, 2007, through August 18, 2008. **(FINRA Case #E022004007205)**

**Joshua Wayne Lankford (CRD #2783571, Registered Representative, Dallas, Texas)** submitted an Offer of Settlement in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the allegations, Lankford consented to the described sanction and to the entry of findings that he failed to respond to FINRA requests to provide testimony and information and documents. **(FINRA Case #2005000075702)**

**Daniel Richard LaPiana (CRD #1550192, Registered Representative, Gibsonia, Pennsylvania)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, LaPiana consented to the described sanction and to the entry of findings that he improperly obtained \$822.53 from his member firm by submitting a falsified expense report indicating purchases for his branch office, and misrepresenting the charges on the requisition request. The findings stated that LaPiana created a fictitious critical illness insurance application for a public customer without the customer's authority or consent, signed the customer's name and submitted the document to his member firm's underwriting department. The findings also stated that LaPiana improperly maintained former employees on the payroll of an insurance company following their resignations, failed to notify his member firm that they resigned, created false productivity reports and submitted the documents to his member firm, thereby ensuring that they would continue to receive compensation. **(FINRA Case #2007008905001)**

**Joshua Elliott Lord (CRD #3127269, Registered Principal, Brooklyn Park, Minnesota) and Mark Raymond Sheffield (CRD #4130223, Registered Representative, Lakeville, Minnesota)** submitted Letters of Acceptance, Waiver and Consent in which Lord was fined \$5,000 and suspended from association with any FINRA member in any principal capacity for 15 business days. Sheffield was suspended from association with any FINRA member in any capacity for 30 business days. In light of Sheffield's financial status, no monetary sanctions were imposed. Without admitting or denying the findings, Lord and Sheffield consented to the described sanctions and to the entry of findings that Sheffield prepared and distributed market updates that Lord reviewed and approved that met the definition of a "research report," but did not meet the disclosure and content requirements for research reports and communications with the public. The findings stated that Sheffield acted as a research analyst although he was not registered in that capacity. The findings also stated that Lord failed to detect the disclosure and content violations, and did not prevent the use of the updates, thereby failing to reasonably supervise Sheffield.

Lord's suspension in a principal capacity was in effect from November 5, 2007, through November 26, 2007. Sheffield's suspension in any capacity is in effect from November 5, 2007, through December 17, 2007. **(FINRA Cases #20050035738-01/20050035738-02)**

**Steven Kenneth Maidlow (CRD #1831371, Registered Representative, Cincinnati, Ohio)** submitted an Offer of Settlement in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the allegations, Maidlow consented to the described sanction and to the entry of findings that he caused \$10,000 to be electronically transferred from a public customer's account and sent to the customer's deceased mother's estate checking account, without the customer's knowledge and consent, to resolve a shortfall in that account caused by Maidlow's failure to liquidate bonds the estate held in a timely fashion. The findings stated that Maidlow prepared and sent to the customer documentation showing that the \$10,000 previously removed from the customer's account had been returned when, in fact, it had not. The findings also stated that Maidlow failed to respond to FINRA requests for information. **(FINRA Case #2006005483001)**

**Robert Gibbes McDowell Jr. (CRD #1047763, Registered Representative, Beaufort, South Carolina)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for 60 days. The fine must be paid either immediately upon McDowell's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, McDowell consented to the described sanctions and to the entry of findings that he participated in private securities transactions without giving prompt written notice to, and receiving approval from, his member firm.

The suspension in any capacity is in effect from November 5, 2007, through January 3, 2008. **(FINRA Case #2006006123601)**

**Richard Wayne Mentz Jr. (CRD #2150829, Registered Principal, Scottsdale, Arizona)** was barred from association with any FINRA member in any capacity. The sanction was based on findings that Mentz recommended and effected transactions in a public customer's account that were unsuitable in light of the customer's age, financial situation and investment objective of income. The findings stated that Mentz' churning of the customer's account was egregiously excessive and demonstrated his intention to enrich himself at the customer's expense. **(FINRA Case #2005001087801)**

**Aaron Dale Mittelbuscher (CRD #5063688, Registered Representative, Shiloh, Illinois)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for six months. The fine must be paid either immediately upon Mittelbuscher's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Mittelbuscher consented to the described sanctions and to the entry of findings that he signed public customers' names to variable deferred annuity applications without the customers' knowledge or consent, and when confronted by his member firm, denied forging the customers' signatures.

The suspension in any capacity is in effect from November 19, 2007, through May 18, 2008. **(FINRA Case #2006006338501)**

**Jayant Murthy (CRD #5106842, Registered Representative, Princeton Junction, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any FINRA member in any capacity for two years. The fine must be paid either immediately upon Murthy's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Murthy consented to the described sanctions and to the entry of findings that while taking the Series 7 qualification exam, he made several telephone calls to his co-workers requesting assistance regarding topics tested on the exam.

The suspension in any capacity is in effect from November 19, 2007, through November 18, 2009. **(FINRA Case #2007008698501)**

**Clarence Morris O'Shields (CRD #2427077, Registered Principal, Lexington, Virginia)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for 10 business days. Without admitting or denying the findings, O'Shields consented to the described sanctions and to the entry of findings that he effected a securities transaction in a public customer's account without her prior authorization.

The suspension in any capacity was in effect from November 19, 2007, through December 3, 2007. **(FINRA Case #2006006619601)**

**Pratik V. Patel (CRD #5203105, Associated Person, Gilberts, Illinois)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for two months. The fine must be paid either immediately upon Patel's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Patel consented to the described sanctions and to the entry of findings that he failed to disclose a material fact on his Form U4.

The suspension in any capacity is in effect from November 5, 2007, through January 4, 2008. **(FINRA Case #2006006687501)**

**James Reilly (CRD #2689870, Registered Representative, Hampton, New Hampshire)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for 90 days. The fine must be paid either immediately upon Reilly's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Reilly consented to the described sanctions and to the entry of findings that he caused a public customer's signature to be affixed to a document that was used to purchase a fixed annuity without the customer's authorization or consent.

The suspension in any capacity is in effect from November 5, 2007, through February 2, 2008. **(FINRA Case #2006006759101)**

**David Chris Rice (CRD #1855792, Registered Principal, Lewisville, Texas)** submitted an Offer of Settlement in which he was fined \$10,000 and suspended from association with any FINRA member in any capacity for 30 business days. Without admitting or denying the allegations, Rice consented to the described sanctions and to the entry of findings that he used discretion to effect securities transactions in public customers' accounts but never reduced his use of discretion to writing, and his member firm never accepted the accounts as discretionary because it did not permit discretionary accounts.

The suspension in any capacity is in effect from November 5, 2007, through December 17, 2007. **(FINRA Case #E062004031301)**



**Rafael F. Rodriguez-Abella (CRD #2567805, Registered Representative, San Juan, Puerto Rico)** submitted a Letter of Acceptance, Waiver and Consent in which he was suspended from association with any FINRA member in any capacity for 10 business days. In light of Rodriguez-Abella's financial status, no monetary sanction has been imposed. Without admitting or denying the findings, Rodriguez-Abella consented to the described sanction and to the entry of findings that he borrowed \$10,000 from a public customer without his member firm's approval.

The suspension in any capacity was in effect from October 29, 2007, through November 9, 2007. **(FINRA Case #2006006423901)**

**Wanda Pittman Sears (CRD #2214419, Registered Representative, Roanoke, Virginia)** was suspended from association with any FINRA member in any capacity for two years for unauthorized trading. She was also suspended from association with any FINRA member in any capacity for six months for engaging in outside business activities without providing her member firm with prompt written notice. The suspensions will be served concurrently. In light of Sears' financial status, no monetary sanction was imposed. The NAC imposed these sanctions after Sears appealed from an OHO decision which barred her for unauthorized trading and suspended her for one year for engaging in outside business activities without notice. The NAC based its sanctions on findings that Sears effected unauthorized securities transactions in 20 customers' accounts and that Sears admitted that she participated in outside business activities without providing prompt written notice to her member firm.

This decision has been appealed to the SEC, thus, the sanctions are not in effect pending consideration of the appeal. **(FINRA Case #C0720050042)**

**Laura C. Schatz (CRD #5147201, Associated Person, Round Lake Beach, Illinois)** submitted a Letter of Acceptance, Waiver and Consent in which she was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Schatz consented to the described sanction and to the entry of findings that she used her supervisor's credit card to pay for her personal expenses without her supervisor's knowledge or consent. **(FINRA Case #2007007821601)**

**Paul Gerard Schiller (CRD #1416950, Registered Representative, Waubun, Minnesota)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$11,000, which included disgorgement of \$6,000 received in compensation, and suspended from association with any FINRA member in any capacity for one year. The fine must be paid either immediately upon Schiller's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Schiller consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice to his member firm describing in detail the proposed transactions and his proposed role therein. The findings stated that Schiller's firm did not approve, in writing, his participation in the transactions.

The suspension in any capacity is in effect from November 19, 2007, through November 18, 2008. **(FINRA Case #20070081057-01)**

**Richard Walter Simpson (CRD #2129917, Registered Principal, San Diego, California)** submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for 20 business days. The fine must be paid either immediately upon Simpson's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the allegations, Simpson consented to the described sanctions and to the entry of findings that he failed to respond, and to timely respond, to FINRA requests for information and documents. The findings stated that Simpson failed to respond to FINRA requests for an on-the-record interview.

The suspension in any capacity was in effect from November 5, 2007, through December 3, 2007. **(FINRA Case #E022004014507)**

**Todd Edward Smith (CRD #2211835, Registered Representative, Independence, Kentucky)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for two months. The fine must be paid either immediately upon Smith's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Smith consented to the described sanctions and to the entry of findings that he signed a customer's wife's name on transfer letters, without the customer's knowledge or consent, to transfer stock out of their joint account to charitable organizations.

The suspension in any capacity is in effect from November 5, 2007, through January 4, 2008. **(FINRA Case #2007008035201)**

**Debbie E. Strnad (CRD #5262687, Associated Person, Westchester, Illinois)** submitted a Letter of Acceptance, Waiver and Consent in which she was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Strnad consented to the described sanction and to the entry of findings that she took \$20,560 from her member firm's banking affiliate, without the bank's knowledge or consent, and used the funds for her own purposes. **(FINRA Case #2007009277002)**

**Hitomi Tsuyuki (CRD #1550142, Registered Representative, Coto de Caza, California)** was barred from association with any FINRA member in any capacity and ordered to pay \$188,957.82, plus interest, in restitution to public customers. The sanctions were based on findings that Tsuyuki received \$188,957.82 from public customers to be deposited into a money market account, or to purchase municipal bonds but, instead, deposited the funds into his own accounts and concealed these acts of conversion by providing false account statements to the customers. The findings stated that Tsuyuki failed to respond to FINRA requests for information and to appear for an on-the-record interview. **(FINRA Case #2005002253201)**

**Larry Washington (CRD #2228845, Registered Representative, Oak Park, Michigan)** was barred from association with any FINRA member in any capacity. The sanction was based on findings that Washington borrowed \$5,000 from a public customer when his member firm's written supervisory procedures prohibited borrowing money from customers. The findings stated that Washington failed to respond to FINRA requests for information. **(FINRA Case #2006006623601)**

**James B. Weigler (CRD #5248663, Associated Person, Woodbridge, Virginia)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for three months. The fine must be paid either immediately upon Weigler's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Weigler consented to the described sanctions and to the entry of findings that he willfully failed to disclose material information on his Form U4.

The suspension in any capacity is in effect from October 15, 2007, through January 14, 2008. **(FINRA Case #2007008532701)**

## Decision Issued

The Office of Hearing Officers (OHO) issued the following decision, which has been appealed to or called for review by the NAC as of October 31, 2007. The NAC may increase, decrease, modify or reverse the findings and sanctions imposed in the decision. Initial decisions which time for appeal has not yet expired will be reported in the next FINRA Notices.

**Harvest Capital Investments, LLC (CRD #40367, Vienna, Virginia) and Dennis Cotto (CRD #3047293, Associated Person, Vienna, Virginia)**. The firm was expelled from FINRA membership and Cotto was barred from association with any FINRA member in any capacity. The sanctions were based on findings that the firm, acting through Cotto, permitted Cotto to manage and control its securities business and otherwise engage in activities and functions that required registration with FINRA as a general securities principal, even though he was not registered with FINRA, and while he was suspended by FINRA for six months in any capacity. The findings stated that Cotto appeared for a FINRA on-the-record interview without bringing all the documents FINRA had requested. The findings also stated that the firm, acting through Cotto, failed to respond, failed to respond fully and completely, and failed to respond timely, to FINRA requests for information. FINRA further found that Cotto willfully failed to amend, or caused it to be amended, his Form U4 to disclose material information. FINRA also found that the firm, acting through Cotto, willfully filed a false Uniform Application for Broker-Dealer Registration (Form BD) amendment and, failed to amend, and to timely amend, the firm's Form BD to disclose material information.

This decision has been appealed to the NAC and the sanctions are not in effect pending consideration of the appeal. **(FINRA Case #2005001305701)**

## Complaint Filed

FINRA issued the following complaint. Issuance of a disciplinary complaint represents FINRA's initiation of a formal proceeding in which findings as to the allegations in the complaint have not been made and does not represent a decision as to any of the allegations contained in the complaint. Because this complaint is unadjudicated, you may wish to contact the respondent before drawing any conclusions regarding these allegations in the complaint.

**Thomas Charles Helbig (CRD #1039534, Registered Representative, Carnegie, Pennsylvania)** was named as a respondent in a FINRA complaint alleging that he misused funds belonging to a public customer by causing an unauthorized transfer of \$10,000 from an annuity the customer owned to a bank account he owned, thereby commingling the customer's funds with his personal funds. The complaint alleges that Helbig failed to respond fully to FINRA requests for information and documents and failed to appear to testify. **(FINRA Case #2006005528601)**

**Firm Expelled for Failure to Pay Fines and/or Costs Pursuant to NASD Rule 8320**

STG Secure Trading Group, Inc.  
Boca Raton, Florida  
(October 18, 2007)

**Firms Expelled for Failure to Supply Financial Information Pursuant to NASD Rule 9552(h)**

Cannondale Securities, LLC  
New York, New York  
(October 23, 2007)

Seaway Investment Company, Inc.  
Muskegon, Michigan  
(October 24, 2007)

**Firms Suspended for Failure to Supply Financial Information Pursuant to NASD Rule 9552**

*(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)*

Docent Financial Services, Corp  
Natick, Massachusetts  
(October 8, 2007)

The Orion Capital Group, Inc.  
Hoboken, New Jersey  
(October 8, 2007)

**Individual Suspended Pursuant to NASD Rule 9553 for Failure to Pay Arbitration Fees**

*(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)*

Justin Charles Lasalla  
Centerreach, New York  
(October 24, 2007 – November 5, 2007)

**Individual Revoked for Failing to Pay Fines and/or Costs Pursuant to NASD Rule 8320**

Alan David Weiner  
Delray Beach, Florida  
(October 18, 2007)

**Individuals Barred Pursuant to  
NASD Rule 9552(h)**

*(If the bar has been vacated, the date follows the bar date.)*

**Eric James Brown**  
Highland Beach, Florida  
(October 5, 2007)

**Sherman Edd Douglas**  
Mobile, Alabama  
(October 3, 2007)

**Brian Lintag Fernando**  
Las Vegas, Nevada  
(October 31, 2007)

**Brian Frederick Ferraioli**  
West Orange, New Jersey  
(October 17, 2007)

**Kenneth A. Kuley**  
Cincinnati, Ohio  
(October 25, 2007)

**Robert John Langley**  
Irvine, California  
(December 3, 2003 – October 23, 2007)

**Erik Karl Penzin**  
Santa Monica, California  
(October 19, 2007)

**Alethea Outing Ramey**  
Charlotte, North Carolina  
(October 10, 2007)

**Deanna Louise Snodgrass**  
Tucson, Arizona  
(October 4, 2007)

**Robert Starace**  
Brooklyn, New York  
(October 17, 2007)

**Individuals Suspended Pursuant to  
NASD Rule 9552(d)**

*(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)*

**Garfield Earnest Como**  
Richmond, Texas  
(October 15, 2007 – November 27, 2007)

**Kendall George Sohaski**  
Fort Wayne, Indiana  
(October 1, 2007)

**Nwaka Ogwuru Ugokwe**  
Smyrna, Georgia  
(October 15, 2007)

**Coco Chanel Worthy**  
Atlanta, Georgia  
(October 30, 2007)



**Individuals Suspended Pursuant to NASD Rule Series 9554 for Failure to Comply with an Arbitration Award or Settlement Agreement**

*(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)*

**Joseph Ruggerio Barile**  
Parsippany, New Jersey  
(October 12, 2007)

**George Stanley Blake**  
Alpharetta, Georgia  
(October 16, 2007)

**Ronald Edward Diehl**  
Germantown, Tennessee  
(October 16, 2007)

**Robert Darrell Drew**  
La Jolla, California  
(October 1, 2007)

**Emily Jean Halsband**  
Wauke, Iowa  
(October 15, 2007)

**LouAnn Hinish**  
Saxton, Pennsylvania  
(October 1, 2007)

**Mitchell R. Jesse**  
Reno, Nevada  
(October 18, 2007)

**Christopher Drury Johnson**  
Miami, Florida  
(January 3, 2007 - October 1, 2007)

**Edward Robert Lanahan**  
Parkville, Maryland  
(October 1, 2007)

**David Vincent Liuzza**  
Covington, Louisiana  
(October 23, 2007)

**Robert Christopher Patrick**  
Ronkonkoma, New York  
(October 3, 2007)

**Harvey Nathan Permutt**  
Melville, New York  
(October 16, 2007)

**Gilad Sartena**  
New York, New York  
(October 3, 2007)

**Steven Frederick Schaefer**  
Mars, Pennsylvania  
(October 11, 2007)

**Mark Jeffrey Sheehy**  
Scottsdale, Arizona  
(October 8, 2007)

**Timothy Patrick Shively**  
San Antonio, Texas  
(October 12, 2007)

**Eduardo M. Tejeda**  
Houston, Texas  
(October 18, 2007)

**Alan Kent Wise**  
Carlsbad, California  
(October 18, 2007)

## **FINRA Fines UBS Financial Services \$370,000 for Late Reporting, Failing to Report Broker Information**

### **Firm Was Late With More Than 550 Disclosure Filings Relating to Customer Complaints, Regulatory Actions and Criminal Disclosures; Firm Failed to Disclose Customer Complaints in 24 Other Instances**

The Financial Industry Regulatory Authority (FINRA) has censured and fined UBS Financial Services, Inc. (UBS) \$370,000, for making hundreds of late disclosures to FINRA's Central Registration Depository (CRD) of information about its brokers, including customer complaints, regulatory actions and criminal disclosures. Those reporting violations occurred over a three-year period, from January 2002 through December 2004.

The firm also failed to disclose a significant number of customer complaints and filed late and inaccurate notices concerning the termination of certain brokers' relationships with the firm.

"Investors, regulators and others rely heavily on the accuracy and completeness of the information in the CRD public reporting system—and, in turn, the integrity of that system depends on timely and accurate reporting by firms," said Susan Merrill, FINRA Executive Vice President and Chief of Enforcement.

As a practical matter, the violations may have hampered investors' ability to assess the background of certain brokers via BrokerCheck, FINRA's public disclosure program. They also may have compromised firms' ability to conduct background checks when making hiring decisions, reduced the ability of state securities regulators to review brokers' transfer applications and hindered FINRA from promptly investigating certain disclosure items.

Under FINRA rules, when a securities firm hires a broker it must ensure that information on the broker's registration application (Form U4) is updated and kept current in the CRD system. The firm must update that information whenever significant events occur, including regulatory actions against the broker, certain customer complaints, settlements involving the broker and certain criminal charges and convictions. Normally, those updates must be filed within 30 calendar days of the event. A reportable event involving statutory disqualification (often the result of a criminal conviction) must be disclosed to CRD within 10 calendar days. Firms also are required to notify FINRA within 30 calendar days of the termination of a registered person's association with a member firm by filing a notice known as Form U5. Firms also must notify FINRA within 30 calendar days of learning that information disclosed on a Form U5 filed for a broker has become inaccurate or is incomplete.

Regarding complaints, certain types of written, consumer-initiated, investment-related complaints made within the past 24 months must be disclosed on Forms U4 and/or U5. If a complaint alleges that a broker was involved in one or more sales practice violations and contains a claim for compensatory damages of \$5,000 or more, it must be disclosed. Additionally, complaints alleging broker involvement in forgery, theft, misappropriation or conversion of funds or securities must also be disclosed.

In the UBS case, FINRA found that:

- From January 2002 through December 2004, UBS failed to report on time 559 required disclosures on Forms U4 and U5 relating to reportable customer complaints, regulatory actions and criminal disclosures, representing a non-compliance rate of over 18 percent. During the same time period, the firm failed to have supervisory systems and procedures in place reasonably designed to achieve compliance with reporting obligations for timely disclosures.
- From January 2002 through December 2004, UBS failed to disclose on Forms U4 and U5 at least 24 reportable written customer complaints that the firm had received.
- From January 2002 through mid-June 2003, in connection with retired registered persons who participated in UBS's Retiring Broker Program, the firm failed to file 31 termination notices on time (Forms U5), representing over 64 percent of such filings, and failed to report accurate termination dates on 32 Forms U5, representing over 66 percent of such filings.

As part of the settlement, UBS agreed to conduct an internal audit to evaluate the effectiveness of its system for timely compliance with certain Forms U4 and U5 reporting obligations. In addition, the firm agreed that an officer of the firm will certify that such audit has occurred and that recommendations from the audit have been or will be implemented.

In settling this matter, UBS neither admitted nor denied the allegations, but consented to the entry of FINRA's findings.

## **FINRA Fines Oppenheimer \$1 Million to Settle Charges that It Produced Flawed, Incomplete and Untimely Data in Breakpoint Self-Assessment**

### **Submission of Data the Firm Knew To Be Flawed Among Key Findings**

The Financial Industry Regulatory Authority (FINRA) has fined Oppenheimer & Co. Inc. \$1 million for submitting mutual fund breakpoint data to FINRA that the firm knew to be inaccurate, as well as for related supervisory deficiencies. FINRA also ordered the firm to engage an independent consultant to evaluate its policies, systems and procedures for responding to information requests from regulators.

"The self-regulatory model depends on accurate, timely, and complete responses by firms to informational requests from FINRA," said Susan Merrill, FINRA Executive Vice President and Chief of Enforcement. "This settlement sends a clear message to broker dealers that they must have sound programs that insure conscientious responses to regulatory requests as well as reasonable safeguards when responsibility is delegated."

FINRA's (then NASD) initial request to Oppenheimer for a breakpoint assessment was made in March 2003 as part of a review of approximately 2,000 broker-dealers that sold front-end load mutual funds in 2001 and 2002. That request followed findings by NASD and other regulators that showed that nearly one in three mutual fund transactions in front-end load mutual funds that appeared eligible for a breakpoint discount did not receive one.

FINRA found that on two occasions, June 11, 2003, and Nov. 20, 2003, Oppenheimer submitted inaccurate and incomplete data in response to NASD's request to perform a self-assessment of its mutual fund breakpoint discount practices. The firm knowingly, or at a minimum recklessly, submitted flawed data to NASD, failed to notify NASD that the data was flawed, failed to follow up to correct the firm's data and failed to timely submit accurate data to NASD.

In its June 11 submission, Oppenheimer provided data that it knew to be flawed, without advising NASD of the known flaws. On June 13, 2003, NASD advised the firm that its submission was "pervasively flawed" and "rife with errors" and directed Oppenheimer to immediately generate and submit a new self-assessment.

The investigation further found that the firm's second self-assessment, submitted more than five months after the firm's initial submission, contained obvious deficiencies, such as the inclusion of ineligible transactions that should have been excluded from the sample; the failure to identify linked accounts; the failure to include proper discount information; the failure to provide actual sales charge percentages, appropriate sales charge percentages and proper discount descriptions; and the failure to identify overcharged trades, among other problems. Each of Oppenheimer's self-assessment submissions so completely and fundamentally failed to comply with the regulatory request that FINRA was unable to rely on Oppenheimer's data to analyze the firm's breakpoint compliance both in absolute terms and in relation to the approximately 2,000 other registered firms that contemporaneously submitted breakpoint self-assessments.

In addition to a fine, censure and independent consultant's review, Oppenheimer is obligated to conduct internal audits of its processes for intake, assignment and responses to regulatory inquiries. Oppenheimer is required to report its findings to FINRA quarterly for a period of six quarters.

Oppenheimer settled the matter without admitting or denying the charges, but consented to the entry of FINRA's findings and dismissal of charges against Oppenheimer CEO Albert Grinsfelder Lowenthal.